IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1209 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

G.S.R.T. CORPORATION

Versus

NANJI BHIKHABHAI LILA

Appearance:

1. Special Civil Application No. 1209 of 1989

MR HARDIK C RAWAL for Petitioner No. 1

SERVED BY AFFIX.-(R) for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner. Notice of rule issued by this court has been served upon the respondent by affixing but the respondent has not remained present before this court either in

person or through any advocate and, therefore, the matter has been taken up for final hearing in his absence.

By way of this petition, the petitioner has challenged the award made by the labour court concerned on reference no. 644 of 1986 dated 5th July, 1988 whereby the labour court has directed the petitioner to include the name of the respondent in the wait list of conductors and to give him work as and when necessity arise. While issuing rule, this Court has directed the corporation to reinsert the name of the respondent in the wait list of conductors subject to the result of the present petition. Therefore, as a consequence of the directions issued by this court while issuing rule on the petition, the respondent must have been reinstated in service by reinserting his name in the list of conductors.

Learned advocate Mr.Raval for the petitioner has submitted that in the formal inquiry held against the respondent workman, charge was admitted by the respondent and, therefore, detailed inquiry has not been initiated against the respondent. He has submitted that since the charge has been admitted by the respondent, the labour court has committed gross error in granting relief in favour of the respondent workman.

Before the labour court, statement of claim was filed by the respondent at Exh. 3 and reply thereto was filed by the petitioner at Exh.5 and thereafter, no evidence was led by the either side and then the merits of the matter were examined by the labour court. The labour court considered that the show cause notice was issued to the respondent as per Exh. 8 wherein it was alleged that he recovered fare of Rs.00.50 ps. from one lady passenger travelling from Devpura to Sahakar Bhavan.It has also been alleged that the respondent refused to give the statement on the spot and the reply was submitted by the respondent to the said show cause notice vide Exh. 9 and it was stated that he had not collected fare from the said passenger and it has also been stated that he was asked by the checking party to sign on blank paper and, therefore, he had refused to give the statement on the spot. The workman had admitted that previously on two occasions, he had collected fares from the passengers without issuing tickets. He had also admitted that on 13th February, 1985, he has not checked the student pass which was blank and undated and on that basis, the workman was found tobe guilty by the corporation and his name has, therefore, been removed from the wait list vide order which is at Exh. 13.

However, the labour court was of the view that it is true that the charges levelled against the respondent were serious in nature. The labour court was also of the view that for such a serious charges, no charge sheet has been served upon the respondent and the reporter was not examined to prove the charge levelled against the respondent and the respondent has denied the charge levelled against him. Therefore, according to the labour court, it was a case of no inquiry into the alleged misconduct and without such inquiry, name of the respondent was removed from the list only on the basis of the sole evidence of the workman wherein also, he has denied the charge. In view of this, the labour court was of the view that the action of the corporation was contrary to the principles of natural justice and, therefore it directed the petitioner to reinsert the name of the respondent in the wait list of conductors.

Upon perusal of the entire award made by the labour court, in the facts and circumstances of the case, according to my opinion, the view taken by the labour court is that no departmental inquiry has been initiated by the corporation before removing the name of the respondent from the wait list of conductors and the view taken by the labour court is in consonance with the principles laid down by this court in 1993 (1) GLR 442 wherein the question relating to Badli workers in the ST Corporation has been examined by the Division Bench of this Court in case of Gujarat State Road Transport Corporation versus Chandulal G. Rasadiya reported in 1993 (1) GLR page 442. In the said decision, the contention raised on behalf of the corporation was that the badli workers are not having the status of ST Employees and they are free to get employment elsewhere at their free will. In para 9 and 14 of the said judgment, it has been observed by the Division Bench of this Court as under:

"9. In our view, the aforesaid contention of the learned advocate for the petitioner cannot be accepted when a Badli worker's name is to be removed from the waiting list on the ground of his alleged grave misconduct. It is true that "Badli workers" are not employees of the corporation in view of Regulation 16. Therefore, the Discipline and Appeal Procedure is not required to be followed in case of Badli Workers. However, it should be noted that because of the adverse verdict of grave misconduct against the Badli worker-

(i) it would stigmatize him for his life time.

(ii) it would also affect his reputation.

(iii) his chances of getting service in ST Corporation or in Government Department would be bleak, and

(iv) his livelihood may in certain cases would be at stake.

In this type of cases, it would be unreasonable and against the principles of natural justice to hold that as the person is a Badli worker and his name is only removed from the waiting list prepared by the Corporation, there is no necessity of holding a full fledged inquiry. This would be in violation of principles of natural justice as the person would be condemned unheard which would affect him for the life time.It is true that at the relevant time there was no administrative instruction issued by the ST Corporation for holding departmental inquiry against the Badli worker for his alleged misconduct, therefore,the Corporation was not required to follow the procedure prescribed for employees of the ST Corporation for holding departmental inquiry. At the same time, the Corporation has realized this defect and hence on 20th October, 1987, it has issued a Circular that even with regard to Badli workers, for their alleged misconduct the procedure prescribed for holding departmental inquiry for employees is required to be followed. In any case, as stated above, if the procedure prescribed under the Rules was not applicable at the relevant time, yet, the Corporation was required to follow the Rules of natural justice before arriving at the conclusion that Badli worker has committed grave misconduct.

xxx

14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned advocate for the petitioner that in these cases the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent Corporation. In both the petitions, the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of the bus ticket fare

> as it is alleged that at the time of checking the buses on the relevant dates the Conductors had not issued the ticket after recovering fare and on such other grounds. In both the cases the Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination, if they desired.They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases, the Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then, in that case, further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference."

Therefore, in the facts and circumstances of the case and also in view of the principles laid down by this Court in the aforesaid decision, according to my opinion, the labour court has not committed any error either in law or in facts in making the award in question.

Mr. Raval has not been able to point out any infirmity in the award in question. He has also not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court. Therefore, there is no substance in this petition and the same is required to be rejected.

In view of the above discussion, this petition is dismissed.Rule is discharged. Ad.interim relief granted earlier shall stand vacated with no order as to costs.

9.4.2002. (H.K. Rathod,J.)

Vyas